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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,090	02/17/2004	Beatrice Novelli	16909-2	9900

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KRIEG DEVAULT LLP
ONE INDIANA SQUARE
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INDIANAPOLIS, IN 46204-2079

EXAMINER

CHANNAVAJJALA, LAKSHMI SARADA

ART UNIT	PAPER NUMBER
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1615

MAIL DATE	DELIVERY MODE
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12/04/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/780,090

Applicant(s)

NOVELLI, BEATRICE

Examiner

Lakshmi S. Channavajjala

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Receipt of amendment and response dated 10-1-07 is acknowledged.

Claims 1-13 are pending in the instant application.

Response to Arguments

Applicant's arguments, see pages 2-6, filed 10-1-07, with respect to the rejection(s) of claim(s) 1-13 under 35 USC 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made as follows:

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 12-13 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Instant claims recite the use of a skin care cosmetic kit without actually reciting the method steps for the use and therefore the claimed invention does not fall within at least one of the four categories of patent eligible subject matter recited in 35 U.S.C. 101 (process, machine, manufacture, or composition of matter). For the purpose of examination, the claims are considered as reciting a method of using the skin care cosmetic kit.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claims 1, 4-7 and 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over a combination of US Patent 6,842,918 (Fung) and US PGPUB 2003/0124083 (Filipski et al) OR Filipski in view of Fung.

Fung teaches a hand held facial sauna for vaporizing a liquid and has a body with the exhaust area and a handle and the heater in the body for changing a state of the liquid to a vapor with the vapor having a number of droplets (abstract & figures). For claims 6 and 7, while Fung does not teach the droplet size of the instant claims 6 and 7, Fung teaches that the body of the device contains fresh liquid such as water (col. 2, L 48-54). Fung further teaches that one longstanding problem in the art is a size of the droplets in the vapor that are sprayed or otherwise released from the prior art saunas where a relatively large size of the droplets in the vapor is not conducive to saunas, especially facial saunas (col. 5, L 12-25). Fung suggests that the relatively larger size of the droplets in the vapor may cause discomfort and that the user prefers a relatively finer mist in the vapor for facial massage therapy and for inhalation purposes. Fung suggests ionic generator for reducing the size of the vapor droplets (col. 5, L 55-67) for improved massage. Accordingly, it would have been obvious for one of an ordinary skill in the art at the time of the instant invention to optimize the initial size of the droplets so as to avoid the aggregation of the larger droplets on the face of the user and thus not uncomfortable (col. 1, L 30-36) for the user.

Fung fails to teach a kit comprising the vaporizer and hyaluronate gel of the instant claims.

Filipski teaches non-soap based shaving and moisturizing composition comprising that maintains superior performance attributes while avoiding the harshness and drying associated with soap-based shave preparations. The shaving and moisturizing composition preferably comprises deionized water, humectant, a water-based silicone lubricant, and sodium hyaluronate (abstract & [0010]). Filipski teaches that a key component to a comfortable shave is hydration of the skin and hair shaft that can be achieved through the hydroscopic properties of sodium hyaluronate acid that holds water on the skin and draws moisture from air in contact with the surface of the skin ([0013]. Filipski describes that within one to two minutes and preferably one to 60 seconds after application, the skin is typically hydrated sufficiently to comfortably shave because sodium hyaluronate allows the skin to be replenished with moisture at a cellular level, by providing lubricity and performs as a long-term moisturizer. Filipski also states that the hydroscopic properties of sodium hyaluronate allow the retention of water and attract water from the atmosphere to replenish the skin. For the claimed gel composition, Filipski states that the composition may be in the form of shaving gels, such as aerosol gels.([0016]).

With respect to the usage of the composition, Filipski states that the shaving compositions can be used in various ways such as softening the skin or soaking by a shaving composition for typically a minimum of three minutes. For individuals, who

often do not wait long before shaving, Filipski suggests applying the shaving composition soon after showering or hydrating the shave area, such as being in a sauna, steam room or after swimming ([0017]). The example compositions of Filipski include hyaluronate at an amount of 1%-4% by weight, which is within the claimed ranges (claims 1, 4 and 5). For the claimed preservatives (claim 10), Filipski teaches including preservatives such as benzalkonium, butylparaben, chlorohexynol etc (0010).

Thus, it would have been obvious for one of an ordinary skill art at the time of the instant invention to hydrate the skin with the vaporizer that sprays droplets of water (of Fung) on the skin and then applying the hyaluronate containing compositions (gels) of Filipski because both the references are directed to hydrating the skin, one with water droplets and another with a skin hydrating hyaluronic acid and Filipski further suggests hydrating the skin before applying the hyaluronate containing shaving composition so as to increase the efficiency of the shaving process. Alternatively it would have been obvious for one of an ordinary skill in the art to include the hand held sauna device of Fung together with the composition of Filipski as a single kit because Filipski suggests applying the hyaluronate composition to the skin that has been treated with steam, sauna etc., thus avoiding the need to wait long after soaking the skin. A skilled artisan would have readily noticed the ease with which the skin may be initially hydrated with the sauna of Fung, followed by the application of the hyaluronate composition for holding and retaining the skin the moisture.

2. Claims 2-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,842,918 (Fung) and US PG PUB 2003/0124083 (Filipski et al) OR Filipski in view of Fung as applied to claims 1, 4-7 and 10-13 above, and further in view of US 4,303,676 to Balazas.

Filipski fails to mention the molecular weight of hyaluronic acid of the instant claims 2 and 3.

Balazas teaches a water based viscoelastic compositions comprising a mixture of sodium hyaluronate of different molecular weights, for cosmetic applications as an emollient, moisturizer and lubricant (col. 1, L 59-63, col. 3, L 20-41). Balazas teaches a low (10,000 – 200,000) and a high molecular weight hyaluronate (1×10^6 - 4.5×10^6) in a ratio of 0.3-2:1 and a final concentration of hyaluronate in the range of 0.05% to 5.0% (col. 1, L 64-col. 2, L 14), which includes the molecular weight of the instant claims 2 and 3. Accordingly, it would have been obvious for one of an ordinary skill in the art at the time of the instant invention was made to employ hyaluronic acid of a suitable molecular weight such as that taught by Balazas in the composition of Filipski (which is employed in combination with the sauna device of Fung) because Balazas teaches that the high molecular weight sodium hyaluronate retains approximately 22-27 times their own weight of water at 70% humidity, 8-10 times its own weight at 47% humidity and maintains moist layer on the skin through which the normal skin metabolites pass relatively freely (col. 3, L 56-67). Thus, a skilled artisan would have expected to maintain the skin moisture more efficiently with a high molecular weight hyaluronic acid, when incorporated in the composition of Filipski.

3. Claims 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,842,918 (Fung) and US PG PUB 2003/0124083 (Filipski et al) OR Filipski in view of Fung as applied to claims 1, 4-7 and 10-13 above, and further in view of US 3,817,308 to Bundo and CN 1091275 to Gao.

Fung, described above, teaches adding water to the body of the vaporizer for producing fine droplets of water but fails to disclose the instant claimed mineral water.

Bundo teaches a method of preparing mineral spring water from the water soluble powder components of mineral water, which has the same characteristics of spa water (col. 1, L 8-27, col. 11, L 47-65). With respect to the claims 8 and 9, Bundo describes the constituents of the mineral water in example 1, which describes the presence of bicarbonates, sulphates, phosphates, silicates etc. Examiner notes that instant claim 9 requires the presence of bicarbonates and sulphates but other elements such as calcium, magnesium etc., are not essential (claim recites lower limit as 0 mg/l).

Gao (abstract only) teaches a hand sprayer that is used to spray mineral water on to the face or part of the skin and gently massaging so as to impart beauty to the skin. Thus, it would have been obvious for one of an ordinary skill in the art at the time of the instant invention from the teachings of Bundo and Gao that mineral waters are routinely employed in the spas and bath preparation to promote blood circulation and enhance the metabolic processes, and for maintaining beauty, health and hygiene. While Gao only states mineral water and not the exact composition, Bundo teaches the composition of the mineral water but not in a device to spray. However, a skilled artisan

would have readily employed the mineral water of Bundo in the device of Fung (Gao) with an expectation to provide water vapor droplets to be sprayed on the skin/face before applying the hyaluronate containing composition of Filipski with an expectation to provide the beauty, health and hygienic effects described by Gao and Bundo and further provide moisturization with the composition of Filipski. With respect to the exact amounts of minerals or salts in the mineral water (claim 9), the prior art recognizes the advantages of the mineral waters for skin and body and in the absence of any unexpected advantage with the claimed amounts a skilled artisan would have been able to include the desired amounts of the individual components of the mineral water because Bundo teaches preparing the mineral water from the individual powder components by choosing the different amounts of the minerals and salts. The expected result is to provide improved circulation and also skin moisturization.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lakshmi S. Channavajjala whose telephone number is 571-272-0591. The examiner can normally be reached on 7.00 AM -4.00 PM.

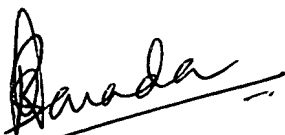
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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AU 1615
November 30, 2007

A handwritten signature in black ink, appearing to read 'Lakshmi S. Channavaajjala', with a horizontal line drawn underneath it.

LAKSHMI S. CHANNAVAJJALA
PRIMARY EXAMINER